



XN 8

PTO/SB/65 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)

Mail to: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450  
Fax: (571) 273-8300

07/17/2012 DALLEN 00000004 6310036  
01 FC:1599

2435.00 OP

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent Number: 6,310,036Application Number: 09/227,400Issue Date: October 30, 2001Filing Date: January 9, 1999

**CAUTION:** Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

**Also complete the following information, if applicable:**

The above-identified patent:

is a reissue of original Patent No. \_\_\_\_\_ original issue date \_\_\_\_\_  
original application number \_\_\_\_\_  
original filing date \_\_\_\_\_

resulted from the entry into the U.S. under 35 U.S.C. 371 of international application \_\_\_\_\_ filed on \_\_\_\_\_.

2012 JUL 16 PM 03:35  
USPTO-2012-07-16-0335**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

July 7, 2012  
Date  
Signature

Kathleen R. Terry

Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## 1. SMALL ENTITY

 Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

## 2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

 Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

## 3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/>	\$ _____	3 ½ yr fee	<input type="checkbox"/>	\$ _____	3 ½ yr fee
<input type="checkbox"/>	\$ _____	7 ½ yr fee	<input type="checkbox"/>	\$ <u>1435</u>	7 ½ yr fee
<input type="checkbox"/>	\$ _____	11 ½ yr fee	<input type="checkbox"/>	\$ _____	11 ½ yr fee

MAINTENANCE FEE BEING SUBMITTED \$ 1435

## 4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.SURCHARGE FEE BEING SUBMITTED \$ 700

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## 5. MANNER OF PAYMENT

Enclosed is a check for the sum of \$ 2435.00

Please charge Deposit Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_\_.

Payment by credit card. Form PTO-2038 is attached.

## 6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. \_\_\_\_\_.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## 7. OVERPAYMENT

As to any overpayment made, please

 Credit to Deposit Account No. \_\_\_\_\_

OR

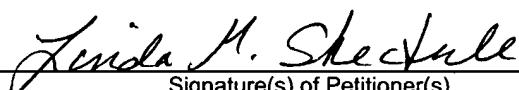
 Send refund check**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

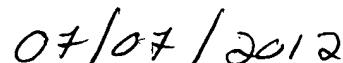
## 8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

## 9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.



Signature(s) of Petitioner(s)



Date

Dr. Linda Shexterle, President for LCTA

Typed or printed name(s)

10965 53rd Avenue North

Address

Registration Number, if applicable

763-473-3007

Plymouth, Minnesota 55442

Address

Telephone Number

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## ENCLOSURES:

- Maintenance Fee Payment
- Statement why maintenance fee was not paid timely
- Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)
- Other: Letter of June 13 2012 from the Office of Petitions

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

  
Signature

Kathleen R. Terry

Type or printed name

  
Date

31884

Registration Number, if applicable

#### STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

United States Patent Number 6,310,036 issued on October 30, 2001 and went abandoned on October 9, 2009 for failure to pay the second maintenance fee. Abandonment was unavoidable.

The '036 patent was filed on January 9, 1999, by Dr. David A. Browdie, sole inventor and president of Last Chance Tissue Adhesives, Inc., (LCTA) the assignee of record. The attorney of record, Louis C. Cullman of the firm of Oppenheimer Wolff Donnelly filed, prosecuted and maintained the patent through first maintenance fee. Dr. Browdie and LCTA relied upon the attorney of record to notify him or the company as to any additional post-issuance matters. Neither Dr. Browdie nor LCTA has ever received any such notices.

In the latter part of 2011, Dr. Linda Shecterle, now president of LCTA, was informed by an unrelated third party that the patent had gone abandoned because of non-payment of the second maintenance fee. Dr. Shecterle promptly ascertained that the patent was abandoned, and with guidance from the USPTO web site, filed a petition to accept a delayed maintenance fee for a patent unintentionally abandoned, under 35 U.S.C. § 41(b), on April 5, 2012. The petition was denied by letter of June 13, 2012.

It is noted that the attorney Louis C. Cullman is now a member of the firm K & L Gates. Perhaps there was an inadvertent failure of transfer of files. It is also noted that Dr. David Browdie, sole inventor and former president of LCTA, is elderly and in poor health.

It was an error to claim unintentional abandonment; the abandonment was unavoidable to LCTA because: (1) the attorney of record failed to either pay the fee or notify LCTA that the fee was due and (2) LCTA was not aware that a post-issuance fee was due.

For these reasons, LCTA respectfully requests revival of the '036 patent.

Enclosed is a Power of Attorney appointing Kathleen R. Terry as Attorney of Record.

(Please attach additional sheets if additional space is needed)



UNITED STATES PATENT AND TRADEMARK OFFICE



Director for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

OPPENHEIMER WOLFF & DONNELLY  
ATTN: LOUIS C. CULLMAN  
840 NEWPORT CENTER DR.  
SUITE 700  
NEW PORT, CA 92660

MAILED

JUN 13 2012

OFFICE OF PETITIONS

In re Patent No. 6,310,036 :  
Issue Date: October 30, 2001 :  
Application No. 09/227,400 :  
Filed: January 9, 1999 :  
Attorney Docket No.: 17347-301 :

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed April 5, 2012, to accept an unintentionally delayed payment of the second maintenance fee for the above-identified patent.

The petition is DISMISSED.

It is initially pointed out that the petition cannot be accepted because the petition is not signed by an attorney or agent registered to practice before the U. S. Patent and Trademark Office, the patentee, or the assignee or other party in interest as established by 37 CFR 3.73(b)<sup>1</sup>. See 37 CFR 1.378(d).

Further, it is noted that this patent issued on October 30, 2001. Accordingly, the second maintenance fee could have been paid during the period from October 30, 2008 through April 30, 2009, or with a surcharge during the period from May 1, 2009 through October 30, 2009. As no payment was timely received, this patent expired at midnight on October 30, 2009.

35 U.S.C. § 41(c)(1) authorizes the Director to accept a delayed maintenance fee payment within twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b) if the delay is shown to have been unintentional, and authorizes the Director to accept a delayed maintenance fee payment at any time if the delay is shown to have been unavoidable. Thus, 35 U.S.C. § 41(c)(1) does not authorize the Director to accept a delayed maintenance fee payment

<sup>1</sup>37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office.

later than twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b) unless the delay is shown to have been unavoidable. Since the instant petition was not filed within twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b), the Director cannot accept a delayed maintenance fee payment for the above-identified patent under 37 CFR 1.378(c).

Since the patent will not be reinstated pursuant to 37 CFR 1.378(c), petitioner is entitled to a refund of the \$2,355 fee submitted with the petition. Any request for refund must include a copy of this decision and be mailed to Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450 or faxed to the Customer Service Help Desk at (571) 273-6500.

Patentee may wish to pursue reinstatement of the patent under the unavoidable provisions of 37 CFR 1.378(b). A petition to accept the delayed payment of a maintenance fee under 35 USC 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate, showing that the delay was unavoidable, since reasonable care was taken to insure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1). Further, if a petition for reinstatement of the patent under the unavoidable provisions is filed on behalf of the assignee, the petition must also comply with the provisions of 37 CFR 3.73(b).

Any petition under the provisions of 37 CFR 1.378(b) must be filed within TWO MONTHS of the date of this decision and should be delivered through one of the following mediums:

By mail:                    Mail Stop PETITIONS  
                                  Commissioner for Patents  
                                  Post Office Box 1450  
                                  Alexandria, VA 22313-1450

By hand:                    Customer Service Window  
                                  Mail Stop Petitions  
                                  Randolph Building  
                                  401 Dulany Street  
                                  Alexandria, VA 22314

By fax:                     (571) 273-8300  
                                  ATTN: Office of Petitions

By Internet:               EFS-Web<sup>2</sup>

<sup>2</sup> [www.uspto.gov/ebc/efs\\_help.html](http://www.uspto.gov/ebc/efs_help.html) (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

A courtesy copy of this decision is being mailed to petitioner at the address noted on the petition. Unless otherwise directed, all future correspondence regarding this patent will be directed solely to the above-noted correspondence address of record.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3204.

/SDB/

Sherry D. Brinkley  
Petitions Examiner  
Office of Petitions

cc: LINDA M. SHECTERLE  
10965 53<sup>RD</sup> AVE. N.  
PLYMOUTH, MN 55442